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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/064,959
Filing Date: September 04, 2002
Appellant(s): SELF ET AL.

Carl Self et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 16, 2008 appealing from the Office action mailed November 14, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0105773	Linde et al	6-2003
2003/0171897	Bieda et al.	9-2003
2003/0040998	Jordan Kogler et al.	2-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 and 19-20 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. Thus, claims 1-10 and 19-20 are non-statutory since they may be preformed within the human mind.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linde et al. (US Pub. No. 2003/0105773) in view of Bieda et al. (US Pub. No. 2003/0171897 A1).

As per claim 1, Linde et al. teaches an online method for facilitating improved consistency, deliverability and/or measurability of a launch practice utilized in a product development launch cycle across a first launch program team during a first launch program, the online method comprising: determining a launch practice item based on a set of key sources wherein the launch practice item is determine by a committee separate from the first launch program team (paragraph 29 teaches providing information so that the correct decisions, or launch practice items, are taken where a knowledge and an understanding of the relevant market is provided with reference to key success factors, or key sources, there is an understanding of information on the market's unmet needs, and the likelihood of satisfying the unmet needs can be determined, where paragraph 34 teaches the key success factors provide transparency of a market for fast understanding, benchmarking, forecasting and strategic decision-making. Further, paragraph 49 teaches external computers corresponding to various clients or users which are cooperating with a service provider which is associated with

an responsible for the central computer unit with its database, or a committee separate from a launch program, are used, as in paragraph 50, to obtain information related to market performance or the expected future sales of products. In other words, a separate group, or committee, provides, or determines, information pertaining to a new product launch, or launch practices);

Transmitting the launch practice item to an at least one member of the launch program teach wherein the at least one member uses the launch practice item to improve consistency, deliverability and/or measurability of the launch practice (paragraph 32 teaches the invention relying on key success factors for processing, presenting and transmitting relevant information regarding the market situation and for quantification of the post-launch performance, or launch practice item, where paragraph 33 teaches the information is provided by a marketing company and supplied to the manufacturer, and paragraph 34 teaches the key success factors provide transparency of a market for fast understanding, benchmarking, or consistency, forecasting, or measurability, and strategic decision making, deliverability).

However, Linde et al. does not expressly teach the product development launch cycle across a first launch program team during a first launch program and *a second launch program team during a second launch program* where the launch practice items is transmitted to the *second* launch program team and a member of the *second launch program team* uses the launch practice item to improve consistency, deliverability and/or measurability of the launch practice *during the second launch program.*

Bieda et al. teaches the product development launch cycle across a first launch program team during a first launch program and *a second launch program team during a second launch program* where the launch practice items is transmitted to the *second* launch program team and a member of the *second launch program team* uses the launch practice item to improve the launch practice *during the second launch program* (paragraph 13 teaches the desire to provide a product performance integrated database apparatus and methodology which has the feature of providing The basis for new product/process risk analysis by accumulating updated design/process specific lesson learned, where paragraph 25 teaches that costs as well as the stored lessons learned from each complete product development are stored for future use. This simplifies future product development programs, or a second launch program with a second launch program team, by enabling quality issues to be shifted to the design and process development stage rather than later in the product prototype development or field use stages. Further, Table A teaches various performance and engineering/manufacturing changes where lessons learned are a part of this table. Meaning, the launch practice items, including lessons learned, are stored for a future product development, or a second launch program with a second launch program team, and then these launch practice items are shifted, or transmitted, to the future product team and enable quality issues to be taken care of, or rather the future product team, or second launch program team, uses the launch practice item, or lessons learned, to improve the launch of the second launch program, or the development of a future product).

Both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25). Thus, it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

As per claim 2, Linde et al. teaches receiving an at least one member observation regarding the launch practice item from at least one member of the first launch program team (paragraph 50 teach data being gather through interviews and monitoring, or observing current purchase patterns. Meaning, the observation of the current purchase patterns and interviews is done by the launch program team.).

Further, although Linde et al. does teach this limitation as claimed. Examiner notes that in the remarks it seems as though Applicant is intending for the observation from the at least one member of the first launch program team is intended to be used by members of the second launch program team. If this is the direction the claim, as amended, was intending, Examiner would like to note that Bieda et al. also teaches this limitation. Paragraph 25 teaches storing lessons learned from each complete product development for future use which enables quality issues to be shift to the design and process development stage rather than later in the product prototype development or field use stages. Meaning, receiving an at least one member observation regarding the

launch practice item from at least one member of the first launch practice team, a lesson learned, for use by at least one member of the second launch practice team, or future product development team. And, since both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25), it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

As per claim 6, Linde et al. teaches the set of key sources includes lessons learned (paragraph 37 teaches a key success factor, or key source, being the capture rate which is a measure indicating and summarizing the market performance, where paragraph 40 teaches the market being static market reflecting (pr resulting from) previous changes on the dynamic submarkets, or lessons learned from the pervious dynamic markets).

However, Linde et al. does not expressly teach these lessons learned are from the at least one member of the first or second launch program team. Bieda et al. teaches lessons learned are from the at least one member of the first or second launch program team (paragraph 25 teaches storing lessons learned from each complete product development, or from the first launch program team, for future use).

Both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25). Thus, it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

As per claim 7, Linde et al. teaches the set of key sources including launch principles (paragraph 46 teaches the why, when, to whom and how of launching the product), product quality planning initiatives (paragraph 53 teaches qualitative marketing efforts affecting the adoption, or launch process), and milestone standards (paragraphs 66-67 teach the different stages in the adoption, or launch practice, or milestones associated with the marketing efforts). However, Linde et al. does not expressly teach the set of key source including assembly plan launch process models, former body and assembly quality systems, former production systems, or product development systems. Examiner takes official notice that using factors such as, assembly plan launch process models, a measure of fit and finish, correct ergonomic execution and appropriate sensory elements, former body and assembly quality systems, former production systems, or product development systems are well known sources of information used to provide information for the launch of a product in the automotive arts. Therefore, it would have been obvious to one of ordinary skill in the art to include assembly plan

launch process models, a measure of fit and finish, correct ergonomic execution and appropriate sensory elements, former body and assembly quality systems, former production systems, or product development systems as key sources to base launch practice items on in order to provide more accurate and flexible launch practices

As per claim 8, Linde et al. teaches the launch practice item is selected from the group consists of launch elements, procedures, guidelines, standards, policies, and work instruction (paragraphs 77-79 teach basing post-launch performance on market information, or launch elements, or information related to quantified unmet needs, standards associated with needs of the market, information related to the propensity of a product, or guidelines associated with needs of the market. Further, paragraph s 80-81 teach calculations of post-launch performance estimations being based on different market types, or the different policies associated with different markets, paragraph 85 teaches the finished result also including information regarding the market parameters, such as market standards, market guidelines, policies for different markets, where paragraph 86 teaches these determining which combination of decisions, or procedures, will render the highest market share, or what the course of action should be, or work instructions, determined by the chosen procedure).

As per claim 9, Linde et al. teaches the launch practice item is a procedure and a document supporting the procedure including measurables and deliverables (paragraph 86 teaches different values of market share will be obtained, or measured, depending on which latent need is emphasized, where the combination of decisions, or procedure, is determined with the latent needs, target groups, and market segments, or

deliverables. Further paragraph 85 teaches the information can be supplied via the Internet, a computer-readable data carrier, or a printed publication).

As per claim 10, Linde et al. teaches the launch practice item is a standard and document supporting the standard including information regarding how the launch practice should be performed (paragraph 46 teaches key success factors, which go into the final product, including the rational of why, when to whom and how the product will be prescribed, or launched, where paragraphs 85-86 teach the information can be supplied via the Internet, a computer-readable data carrier, or a printed publication and determines which combination of decisions will render the highest number of patients for the product, or the market share and consequently, the highest impact on the relevant markets).

As per claim 11, Linde et al. teaches an online system for facilitating improved consistency, deliverability and/or measurability of a launch practice utilized in a product development launch cycle across a first launch program team during a first launch program, the system comprising at least one server operably serving at least one client computer (paragraph 48 teaches a central computer unit associated with a database adapted for storing data related to the various key success factors and also adapted for communicating with a plurality of external computers via a network, paragraph 29 teaches providing information so that the correct decisions, or launch practice items, are taken where a knowledge and an understanding of the relevant market is provided with reference to key success factors, or key sources, there is an understanding of information on the market's unmet needs, and the likelihood of satisfying the unmet

needs can be determined, where paragraph 34 teaches the key success factors provide transparency of a market for fast understanding, benchmarking, forecasting and strategic decision-making. Further, paragraph 49 teaches external computers corresponding to various clients or users which are cooperating with a service provider which is associated with an responsible for the central computer unit with its database, or a committee separate from a launch program, are used, as in paragraph 50, to obtain information related to market performance or the expected future sales of products. In other words, a separate group, or committee, provides, or determines, information pertaining to a new product launch, or launch practice), the at least one server computer configured to:

(i) during the first launch program, transmit a launch practice item to an at least one member of the first launch program team wherein the at least one member uses the define launch practice item to improve consistency, deliverability and/or measurability of the launch practice (paragraph 32 teaches the invention relying on key success factors for processing, presenting and transmitting relevant information regarding the market situation and for quantification of the post-launch performance, or launch practice item, where paragraph 33 teaches the information is provided by a marketing company and supplied to the manufacturer, and paragraph 34 teaches the key success factors provide transparency of a market for fast understanding, benchmarking, or consistency, forecasting, or measurability, and strategic decision making, deliverability);

(ii) receive an at least one member observation regarding the launch practice item from the at least one member of the first launch program team (paragraph 50 teach

data being gather through interviews and monitoring, or observing current purchase patterns)

Linde et al. does not teach the product development launch cycle across a second launch program team during a second launch programor transmitting a revised launch practice item and/or a new launch practice item implementing the at least one member observation to an at least one member of the second launch program team before the end of the second launch program if implementing the observation improves the consistency, deliverability and/or measurability of the launch practice.

Bieda et al. teaches the product development launch cycle across a first launch program team during a first launch program and *a second launch program team during a second launch program* (paragraph 13 teaches the desire to provide a product performance integrated database apparatus and methodology which has the feature of providing The basis for new product/process risk analysis by accumulating updated design/process specific lesson learned, where paragraph 25 teaches that costs as well as the stored lessons learned from each complete product development are stored for future use. This simplifies future product development programs, or a second launch program with a second launch program team, by enabling quality issues to be shifted to the design and process development stage rather than later in the product prototype development or field use stages.) and

the at least one member observation from the at least one member of the first launch program team and transmitting a revised launch practice item implementing the at least one member observation to an at least one member of the second launch

program team before the end of the second launch program if implementing the observation improves the consistency, deliverability and/or measurability of the launch practice (Paragraph 25 teaches storing lessons learned from each complete product development for future use which enables quality issues to be shift to the design and process development stage rather than later in the product prototype development or field use stages, or before the end of the second launch program. Meaning, receiving an at least one member observation regarding the launch practice item from at least one member of the first launch practice team, a lesson learned, for use by at least one member of the second launch practice team, or future product development team. Further, Table A teaches databases to receive various inputs on product performance and engineering/manufacturing changes, including field performance launch, product change requests, lessons learned, etc., or revised or new launch practice items. Meaning the new or revised launch practice items are transmitted to the databases which are then used by a future, or second launch program team, resulting in a transmission of revised launch practice items or new launch practice items to at least one member of the second launch program team, the future launch program team).

Both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25). Thus, it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of

Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

As per claims 12-14, the recites a system with limitation substantially similar to claims 8-10. Since Linde et al. teaches a system, as taught above in claim 11, claims 12-14 are rejected for the same reasons cited above in claims 8-10, respectively.

As per claims 15-18, they recite limitations substantially similar to those of claims 11-14 and are rejected for the same reasons set forth in claims 11-14, respectively.

As per claim 19, Linde et al. teaches receiving key sources from at least one member of the first launch program team (paragraph 46 teaches the why, when, to whom and how of launching the product being from the vendors of the product collected for the launch, or collected by the launch team member, paragraph 53 teaches qualitative marketing efforts affecting the adoption, or launch process and paragraphs 66-67 teach the different stages in the adoption, or launch practice, or milestones associated with the marketing efforts).

Further, although Linde et al. does teach this limitation as claimed. Examiner notes that Bieda et al. also teaches receiving key sources from at least one member of the first launch program team (paragraph 25 teaches storing lessons learned from each complete product development, or from an at least one member of a product development team). And, since both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to

improve upon future product development programs (Bieda et al., paragraph 25), it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

As per claim 20, Linde et al. teaches transmitting the launch practice item to an at least one member of the first launch program team and the at least one member of the first launch program team using the launch practice item to improve consistency, deliverability and/or measurability of the launch practice (paragraph 32 teaches the invention relying on key success factors for processing, presenting and transmitting relevant information regarding the market situation and for quantification of the post-launch performance, or launch practice item, where paragraph 33 teaches the information is provided by a marketing company and supplied to the manufacturer, and paragraph 34 teaches the key success factors provide transparency of a market for fast understanding, benchmarking, or consistency, forecasting, or measurability, and strategic decision making, deliverability).

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linde et al. and Bieda et al. in view of Jordan Kogler et al. (US Pub. No. 2003/0040998).

As per claim 3, Linde et al. teaches determining a launch practice item and receiving member observations as recited above in claim 1 and 2. However Linde et al.

does not teach deciding to revise the launch practice item or to create a new launch practice item if implementing the observation improves the consistency, deliverability and/or measurability of the launch practice.

Jordan Kogler et al. teaches deciding to revise the launch practice item or to create a new launch practice item if implementing the at least one member observation improves the consistency, deliverability and/or measurability of the launch practice (paragraph 69 teaches user customer information and customer lists of the customer data to generate, revise, evaluate or the like, the marketing strategy, market penetration, market demographics, and the like, or launch practice items).

Both Linde et al. and Jordan Kogler et al. teach launch practice items, or marketing items and facilitating market penetration. Therefore it would have been obvious to one of ordinary skill in the art to include revising and creating new launch practice items in the determination of a pre-launch strategy of Linde et al. in order to more accurately monitor and process information as regard the market situation for a particular product in a more effective manner. See Linde et al. paragraph 10.

As per claim 4, Linde et al. teaches transmitting the launch practice item to at least one member as recited in claim 1 above. However, Linde et al. does not expressly teach transmitting the revised launch practice item or the new launch practice item to the at least one member of the second launch program team.

Bieda et al. teaches transmitting a revised launch practice item or the new launch practice item to the at least one member of the second launch program team (paragraph 25 teaches storing lessons learned from each complete product

development for future use which enables quality issues to be shift to the design and process development stage rather than later in the product prototype development or field use stages. Further, Table A teaches databases to receive various inputs on product performance and engineering/manufacturing changes, including field performance launch, product change requests, lessons learned, etc., or revised or new launch practice items. Meaning the new or revised launch practice items are transmitted to the databases which are then used by a future, or second launch program team, resulting in a transmission of revised launch practice items or new launch practice items to at least one member of the second launch program team, the future launch program team.).

Both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25). Thus, it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

As per claim 5, neither Linde et al. does note expressly teach the transmitting step including updating at least one server computer and notifying the at least one member of the second launch program team.

Bieda et al. teaches the transmitting step including updating at least one server computer and notifying the at least one member of the second launch program team (paragraph 25 teaches storing costs as well as lessons learned from each complete product development for future use, or for a future product development program, or a second launch program, further paragraph 36 teaches the present product performance integrated database apparatus and method can be implemented via a suitable computer based local or wide area network or combinations thereof where the plurality of computer based workstations or PC's can access the product performance databases in memory under program control review, input, calculate and/or provide notifications as necessary to a central server or workstation containing such databases, processing units, memory, etc. Further, paragraph 39 and Table A teach receiving various inputs on product performance and engineering/manufacturing changes, or updates concerning product performance and engineering/manufacturing changes, including field performance/launch and lessons learned. Meaning, the databases are updated and can be accessed for the future product development or second launch program teams, and can also include notifications).

Both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25). Thus, it would have been obvious to one of ordinary skill in the art to include the features of Bieda et al. in the teachings of

Linde et al. in order to more accurately determine a pre-launch strategy based on a simulated or estimate post-launch performance. See Linde et al. paragraph 10.

(10) Response to Argument

Appellants argue:

1. Linde et al. does not constitute analogous prior art.

2. Linde et al. would not have logically commended itself to an inventor's attention in considering the invention as a whole.

3. Linde et al. does not teach, disclose or suggest the use of launch practice items to improve product development launch practices as per claim 1.

4. Linde et al. does not address launch practice items utilized by a number of launch programs in a product development launch environment as per claim 1.

5. Bieda et al. fails to cure the deficiencies of Linde et al. concerning the use of launch practice items to improve product development launch practices and launch practice items utilized by a number of launch programs in a product development launch environment as per claim 1.

6. Neither Linde et al. nor Bieda et al. teach or suggest the launch practice item is selected from the group consisting of launch elements, procedures, guidelines, standards, policies, and work instructions as per claims 8, 12 and 16.

7. Neither Linde et al. no Bieda et al. teach or suggest the launch practice item is a procedure and a document supporting the procedure including measurables and deliverables as per claims 9, 13 and 17.

8. Neither Linde et al. nor Bieda et al. teach or suggest the launch practice item is a standard and a document supporting the standard includes information regarding how the launch practice should be performed as per claims 10, 14 and 18.

9. Linde et al. fails to disclose during the first launch program, transmit a launch practice item to an at least one member of the first launch program team, wherein the at least one member uses the defined launch practice item to improve consistency, deliverability and/or measurability of the launch practice as per claims 11 and 15.

10. Linde et al. fails to teach or suggest receiving an at least one member observation regarding the launch practice item from the at least one member of the first launch program team as per claims 11 and 15.

11. Bieda et al. does not disclose transmitting a revised launch practice item and/or new launch practice item implementing the lessons learned to an at least one member of the second launch program team as per claims 4, 11 and 15.

12. Jordan Kogler et al. does not constitute as analogous art.

13. Jordan Kogler et al. does not disclose or suggest any decision-making regarding product launch practices, especially if implementing a program launch team member's observation as per claim 3.

14. Linde et al. fails to teach wherein the set of key sources further includes launch principles, assembly plant launch process models, product quality planning initiatives, former body and assembly quality systems, former production systems, milestone standards, and product development as per claim 7.

Examiner does not find these arguments persuasive, and discusses each of the arguments in detail below:

1. Linde et al. does constitute analogous prior art.

The present invention, as asserted by the Appellants is directed towards a quality management system for use during a product development launch cycle. Linde et al. teaches a method for determining post-launch performance of a product on a market including storing, in a database, collected data related to at least one key success factor associate with at least the market performance which is related to said product; storing, in a database, collected data related to unmet needs on said market; storing, in a database, collected data related to the propensity of a decision-maker to choose said product; and calculating the future market share of said product based on said collected data, thereby determining said post-launch performance on said market (see Abstract). Linde further teaches, that there is a desire for obtaining information related to a pre-launch strategy of a product, in terms of complete and correct pre-launch decisions, in order to determine the post-launch performance of the product on its relevant markets (see paragraphs 3-11). Thus, since Linde et al. is concerned with pre-launch decision making based on post-launch forecasts, Linde et al. is directed towards a quality management system for use during a product development launch cycle.

2. Linde et al. would have logically commended itself to an inventor's attention in considering the invention as a whole.

Examiner directs Appellants to the response to argument 1 where Examiner pointed out specifically how and why Linde et al. is analogous art and is concerned with the same field of endeavor as the present invention.

3. Linde et al. does teach, disclose or suggest the use of launch practice items to improve product development launch practices as per claim 1.

Linde et al., in paragraph 10 teaches the background of the invention and notes that there is a desire for obtaining information related to a pre-launch strategy of a product, in terms of complete and correct pre-launch decisions, in order to determine the post-launch performance of the product on its relevant markets. In this manner, the post-launch performance and consequently the success of a product can be expected to be optimized. Further in paragraph 11, Linde teaches that pre-launch, it should be determine which so-called "unique selling point" is the most relevant for a product and in summary, the total number of possible decision combinations which influence the post-launch success of the product can be substantial. Thus, Linde teaches the use of launch proactive items to improve product development launch practices.

4. Linde et al. does address launch practice items utilized by a number of launch programs in a product development launch environment as per claim 1.

In the summary of the invention of Linde et al., paragraph 12 teaches that a primary object of the invention is to provide a method for determining post-launch performance of a product on a market, i.e. to *estimate* the *future* market performance related to said product. Further, paragraph 13 teaches the object is accomplished by the invention through collecting data related to at least one key success factor

associated with at least the market performance which is related to said product and calculated the future market share of said product based on said collected data, thereby determining said post-launch performance on said market. In other words, Linde does not teach, as the Applicant has interpreted, the post-launch performance of a product *after* launch, but rather, the *estimated* behavior of a product after launch in order to obtain information related to a pre-launch strategy of a product (see also paragraphs 10-11).

5. Bieda et al. does not fail to cure the deficiencies of Linde et al. concerning the use of launch practice items to improve product development launch practices and launch practice items utilized by a number of launch programs in a product development launch environment as per claim 1.

Bieda et al. teaches the product development launch cycle across a first launch program team during a first launch program and *a second launch program team during a second launch program* where the launch practice items is transmitted to the *second* launch program team and a member of the *second launch program team* uses the launch practice item to improve the launch practice *during the second launch program* (paragraph 13 teaches the desire to provide a product performance integrated database apparatus and methodology which has the feature of providing The basis for new product/process risk analysis by accumulating updated design/process specific lesson learned, where paragraph 25 teaches that costs as well as the stored lessons learned from each complete product development are stored for future use. This simplifies future product development programs, or a second launch program with a

second launch program team, by enabling quality issues to be shifted to the design and process development stage rather than later in the product prototype development or field use stages. Further, Table A teaches various performance and engineering/manufacturing changes where lessons learned are a part of this table. Meaning, the launch practice items, including lessons learned, are stored for a future product development, or a second launch program with a second launch program team, and then these launch practice items are shifted, or transmitted, to the future product team and enable quality issues to be taken care of, or rather the future product team, or second launch program team, uses the launch practice item, or lessons learned, to improve the launch of the second launch program, or the development of a future product).

Additionally, both Linde et al. and Bieda et al. teach preparing for new products to enter a market, where Linde et al. teaches determining a strategy for launching a product based on the estimated post-launch performance (Linde et al., paragraphs 10-12) and Bieda et al. teaches utilizing past product launch data in order to improve upon future product development programs (Bieda et al., paragraph 25). It would have been obvious to one of ordinary skill in the art to include in the launch practice methods of Linde et al. the ability to transmit lessons learned from one launch practice to another launch practice as taught by Bieda et al. since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately (i.e., Linde et al. would have performed the pre-launch analysis and Bieda et al. would have performed the transfer of

knowledge the same ways), and one of ordinary skill in the art would have recognized that the results of the combination were predictable (i.e., an improved launch strategy method).

Further, one of ordinary skill in the art of launch practices would have found it obvious to update the launch practices of Linde et al. using additional information, such as lessons learned, as found in Bieda et al., in order to gain the commonly understood benefits of such adaptation, such as a more accurate pre-launch strategy based on estimated post-launch performance of previous launches (see Linde et al., paragraph 10). All this would be accomplished with no unpredictable results.

6. Linde et al. teaches the launch practice item is selected from the group consisting of launch elements, procedures, guidelines, standards, policies, and work instructions as per claim 1.

The launch practice items selected from the group consisting of launch elements, procedure, guidelines, standards policies and work instructions recited in the rejection do not presuppose a drug already on the market, thus rendering the launch phase completed, but rather, the "post-launch" information is a quantification of the future, as recited in paragraph 76. Meaning the "post-launch" information is an estimation of the future, and that the launch has not already occurred but rather, this type of simulated market studies are made possible by the means of the invention, in particular for presenting results of strategic, pre-launch choices as recited in paragraph 86.

Additionally, since the claim language is so broad, Examiner disagrees that the rejection is and "overreaching reaching rejection" and reasserts that paragraphs 77-79

of Linde et al. teach basing post-launch performance on market information, or launch elements, or information related to quantified unmet needs, standards associated with needs of the market, information related to the propensity of a product, or guidelines associated with needs of the market. Further, paragraph s 80-81 teach calculations of post-launch performance estimations being based on different market types, or the different policies associated with different markets, paragraph 85 teaches the finished result also including information regarding the market parameters, such as market standards, market guidelines, policies for different markets, where paragraph 86 teaches these determining which combination of decisions, or procedures, will render the highest market share, or what the course of action should be, or work instructions, determined by the chosen procedure.

7. Linde et al. teaches the launch practice item is a procedure and a document supporting the procedure including measurables and deliverables as per claims 9, 13 and 17.

The procedure, as recited in paragraph 86 of Linde et al., is the combination of decisions that will render the highest number of consumers for the product, and would in fact, details information regarding marketing parameters described above in paragraphs 76-81, and would detail what market to enter, what unmet need to focus on, etc. described throughout the entire disclosure of Linde. Further, the measurables and deliverables are, in fact, anticipated by Linde et al., where was stated in the previous office action that the market shares are obtained, or measured, and can effect the deliverables, or the decisions of latent need, target groups and market segments, or

rather, the outcome of the selection of latent need, target group and market segments, which paragraph 87 further illustrates. Paragraph 87 teaches that the information which can be provided by means of the invention can be used for benchmarking of various products for example, on different markets or during specific time periods. Meaning, the deliverables, or the outcomes of each step in the procedure (i.e., enter market A, focus on latent need B, target group C, enter market at time D, etc.), have measurables of the amount of consumers obtaining the product. Further, as mentioned in the previous office action, paragraph 85 teaches the information can be delivered on a disc in the form of tables, graphs, of a data file, etc. Thus, Linde et al. teaches the limitations of claims 9, 13 and 17.

8. Linde et al. teaches the launch practice item is a standard and a document supporting the standard includes information regarding how the launch practice should be performed as per claims 10, 14 and 18.

Launching a new drug, including a physician's drug prescription habits are related to launch practice standards that include information on how to perform a launch practice and further, and as recited in Linde et al., paragraph 46, such habits are a key success factor. Paragraph 34 teaches that key success factors provide transparency of a market for fast understanding, benchmarking, forecasting, and strategic decision-making and by means of the key success factors, the structure, dynamics and trends on a particular market for a particular drug and/or disease can be studied and analyzed. Thus, the key success factors, including the habits of those who will be selling the new product, are related to launch standards including how to perform a launch practice.

9. Linde et al. discloses during the first launch program, transmit a launch practice item to an at least one member of the first launch program team, wherein the at least one member uses the defined launch practice item to improve consistency, deliverability and/or measurability of the launch practice as per claims 11 and 15.

Examiner notes that Linde et al., paragraph 32 teaches the invention relying on key success factors for processing, presenting and transmitting relevant information regarding the market situation and for quantification of the post-launch performance, or launch practice item, where paragraph 33 teaches the information is provided by a marketing company and supplied to the manufacturer, and paragraph 34 teaches the key success factors provide transparency of a market for fast understanding, benchmarking, or consistency, forecasting, or measurability, and strategic decision making, deliverability. Examiner notes that consistency deliverability and/or measurability are recited in the alternatives and again asserts that benchmarking is a way to improve consistency as it measures a current function against another function, where in this case if you are benchmarking a current drug about to be launched against another drug that has already been launched, you are ensuring, or improving, the consistency in the marketing and deliverability of the current drug product.

10. Linde et al. teaches receiving an at least one member observation regarding the launch practice item from the at least one member of the first launch program team as per claims 11 and 15.

Linde et al. in paragraph 50 teach data being gathered through interviews and monitoring, or observing current purchase patterns. Additionally, the data gathered is utilized, according to paragraphs 49-50 and 70 as collected, stored, processed and presented data for pre-launch qualifications and post-launch performance.

11. Bieda et al. teaches transmitting a revised launch practice item and/or new launch practice item implementing the lessons learned to an at least one member of the second launch program team as per claims 4, 11 and 15.

Bieda et al. teaches transmitting a revised launch practice item implementing the at least one member observation to an at least one member of the second launch program team before the end of the second launch program if implementing the observation improves the consistency, deliverability and/or measurability of the launch practice. Paragraph 25 teaches storing lessons learned from each complete product development for future use which enables quality issues to be shift to the design and process development stage rather than later in the product prototype development or field use stages, or before the end of the second launch program. Meaning, receiving an at least one member observation regarding the launch practice item from at least one member of the first launch practice team, a lesson learned, for use by at least one member of the second launch practice team, or future product development team. Further, Table A teaches databases to receive various inputs on product performance and engineering/manufacturing changes, including field performance launch, product change requests, lessons learned, etc., or revised or new launch practice items. Meaning the new or revised launch practice items are transmitted to the databases

which are then used by a future, or second launch program team, resulting in a transmission of revised launch practice items or new launch practice items to at least one member of the second launch program team, the future launch program team.

12. Jordan Kogler et al. does constitute as analogous art.

Kogler's invention is direct to the field of product marketing, more specifically to a pre-selected or targeted customer base (paragraph 2). Further, Linde teaches in paragraph 11 that when a company intends to launch a product, a number of decisions have to be taken. For example, it should be determined which so-called "unique selling point" is the most relevant for the product. Furthermore, it should be determined which are the most important unmet needs of the market. Also, relevant market target groups should be determined. Thus, in the launching of a product, or in the product development launching practices, marketing plays a key role in determining a strategy and the disclosures of Kogler and Linde would be analogous arts.

13. Jordan Kogler et al. does disclose or suggest any decision-making regarding product launch practices, especially if implementing a program launch team member's observation as per claim 3.

Jordan Kogler et al. teaches deciding to revise the launch practice item or to create a new launch practice item if implementing the at least one member observation improves the consistency, deliverability and/or measurability of the launch practice. Kogler et al. in paragraph 69 teaches user customer information and customer lists of the customer data to generate, revise, evaluate or the like, the marketing strategy, market penetration, market demographics, and the like, or launch practice items.

Additionally, the marketing agent may analyze the customer data and customer lists to gain knowledge of which product offers garner more customer acceptance. Then the marketing agent may refine the customer offers based on information from previous offers to increase product acceptance. Additionally, the marketing agent may analyze customer data to determine, which, if any, second product extensions may be offered. Examiner is considering these steps to be decision-making regarding product launch practices, especially if implementing a program launch team member's observations. Since the offers are for market acceptance, Examiner is considering this to be in the process of launching a product.

Both Linde et al. and Jordan Kogler et al. teach launch practice items, or marketing items and facilitating market penetration. Therefore it would have been obvious to one of ordinary skill in the art to include revising and creating new launch practice items in the determination of a pre-launch strategy of Linde et al. in order to more accurately monitor and process information as regard the market situation for a particular product in a more effective manner. See Linde et al. paragraph 10.

14. Linde et al. in view of Official Notice teaches wherein the set of key sources further includes launch principles, assembly plant launch process models, product quality planning initiatives, former body and assembly quality systems, former production systems, milestone standards, and product development as per claim 7.

Linde et al. teaches the set of key sources including launch principles (paragraph 46 teaches the why, when, to whom and how of launching the product), product quality

planning initiatives (paragraph 53 teaches qualitative marketing efforts affecting the adoption, or launch process), and milestone standards (paragraphs 66-67 teach the different stages in the adoption, or launch practice, or milestones associated with the marketing efforts). However, Linde et al. does not expressly teach the set of key source including assembly plan launch process models, former body and assembly quality systems, former production systems, or product development systems. Examiner has taken Official Notice, which was not challenged and is now taken as prior art,that using factors such as, assembly plan launch process models, a measure of fit and finish, correct ergonomic execution and appropriate sensory elements, former body and assembly quality systems, former production systems, or product development systems are well known sources of information used to provide information for the launch of a product in the automotive arts. Therefore, it would have been obvious to one of ordinary skill in the art to include assembly plan launch process models, a measure of fit and finish, correct ergonomic execution and appropriate sensory elements, former body and assembly quality systems, former production systems, or product development systems as key sources to base launch practice items on in order to provide more accurate and flexible launch practices.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Alison Karmelek

/A. K./

Examiner, Art Unit 3623

/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623

Vincent Millin /VM/

Appeals Practice Specialist

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Conferees:

Beth V. Boswell /bvb/
Supervisory Patent Examiner, Art Unit 3623

Vincent Millin
Appeals Conference Specialist, TC 3600